(A)

(1)

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CRIMINAL APPEAL NO. 152/2005

105

18/2/05

Relied Dubey

Advocate

APPELLANT

(IN Jail)

Dineshwar alias Munna,
S/o. Shri Babulal Deshmukh,
Aged about 39 years,
Occupation - Cultivation,
R/o. Village Tikri,
P.S. Arjunda,
District Durg (C.G.)

VERSUS

18/2/05 R/to D.R. (J)

RESPONDENT

State of Chhattisgarh,
Through P.S. Magarlod,
District Dhamtari (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE, 1973

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.152/2005

Dineshwar @ Munna

Vs.

State of Chhattisgarh

Post for Orders : 12.05.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.152/2005

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Dineshwar alias Munna

Versus

State of Chhattisgarh

Smt. Fouzia Mirza, Counsel for the appellant.

Shri Ashish Shukla, Government Advocate for the State.

JUDGMENT

(Delivered on this 12th day of May 2006)

This appeal is directed against the judgment dated 27.1.2005 delivered by Shri R.P.Sharma, Additional Sessions Judge, Dhamtari in sessions case No.401/2003 whereby the appellant was convicted under Sections 489-A, 489-C, 489-D and 120-B I.P.C. and sentenced to rigorous imprisonment for 10 years, 5 years, 10 years and 5 years respectively and also to pay a fine of Rs.200/- for each offence, in default to undergo additional imprisonment for one month. Co-accused Dr. Arun Sinha, Om Prakash, Dwarika Sahu and Tulsiram Sahu were acquitted.

2. Briefly stated the factual matrix is that the Shri S.K.Dubey, P.W.11, Station House Officer P.S. Magarlod received secret information that co-accused Dr. Arun Sinha, was having large quantity of counterfeit currency notes in his possession. On the aforesaid information, counterfeit currency notes were seized from Dr. Arun Sinha. On the basis of information given by Dr. Arun Sinha, counterfeit currency notes were also seized from co-accused Om Prakash. On the basis of information given by the accused-persons,

the police searched the house of the appellant-Dineshwar on 5.8.2003 and seized from the possession of Khilesh Kumar one printer scanner, copier machine cabinet, one electrical press, one steel cutter, one scissor, one pouch of gum, one wooden scale, one plastic roll, 20sheets of white paper, one plastic scale, 101 counterfeit currency notes of the denomination Rs.100/- bearing same Serial No.2 RW 570092, 8 counterfeit currency notes of Rs.100/- bearing serial No.OAS 894304, 3 counterfeit currency notes of Rs.100/- each bearing No. 3PM 874686, two counterfeit currency notes of Rs.100/- each bearing serial No. 40C 977701, 5 counterfeit notes of the denomination of Rs.50/- each bearing serial No.4 MQ 357820 and 50 sheets of plain paper of each on one side of which counterfeit note of Rs.100/- had been printed and one plain sheet of paper on which two counterfeit notes of Rs.100/- bearing serial No.4A5 894304 vide Ex.P.13.

3. The seized currency notes were sent to the General Manager, Currency Note Press, Nasik Road vide letter dated 11.8.2003 by the Superintendent of Police, Dhamtari for opining whether the seized notes were counterfeit or real. Vide report dated 4.9.2003, no specific opinion was given by the Currency Note Press, Nasik Road as to whether the currency notes were counterfeit or not. No reasons like photographs of Mahatma Gandhi were mentioned to show that the notes resembled with the genuine currency notes of the denomination of Rs.100/- and Rs.50/-. Neither the memo of Superintendent of Police nor the report of Currency Note Press was tendered in evidence or exhibited. The currency notes alleged to have been seized from the house of Dineshwar were also not produced before the trial Court and consequently were also not exhibited as articles during the evidence led by the prosecution.

4. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined as many as 12

witnesses. Relying upon the testimony of the Sub-Inspector S.K.Dubey P.W.11 and the evidence of Santosh Kumar Deshmukh P.W.6, the learned trial Judge convicted and sentenced the appellant as aforesaid.

5. Smt. Fouzia Mirza, learned counsel for the appellant argued that the conviction of the appellant under Section 489-A, 489-C, 489-D and under Section 120-B was liable to be set aside as neither the report of Currency Note Press, Nasik Road was tendered in evidence nor the articles to wit the currency notes alleged to have been seized from the appellant Dineshwar were produced and exhibited before the trial Court by the prosecution. It was also argued that seizure memo Ex.P.13 does not show that any computer or photocopier which are the main instruments to facilitate printing of currency notes, were seized. It was also urged that there was no evidence to show that the currency notes alleged to have been seized from the house of Dineshwar resembled with the genuine currency notes of the denomination of Rs.100/- and Rs.50/-. Lastly, it was urged that non-production of the currency notes alleged to have been seized from the appellant Dineshwar before the trial Court vitiates the prosecution. Reliance was placed on *K. Hashim v. State of T.N.* **(2005) 1 Supreme Court Cases 237** and *The State of Uttar Pradesh v. Hafiz Mohd. Ismail and others* **A.I.R. 1960 Supreme Court 669**. On the other hand, Shri Ashish Shukla, learned Government Advocate argued in support of the impugned judgment and placed reliance on *State of Karnataka v. K.S.Ramdas and others* **1976 CRI.L.J.228** and *Ponnuswamy v. State* **1995 CRI.L.J. 2658.**

6. Having heard the rival submissions, I have perused the record. Section 28 of the I.P.C. defines the word 'Counterfeit' which reads as under:

> "28. **"Counterfeit".**--- A person is said to "counterfeit" who causes one thing to resemble another thing intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.
>
> *Explanation 1.* --- It is not essential to counterfeiting that the imitation should be exact.
>
> *Explanation 2.*---- When a person causes one thing to resemble another thing, and the resemblance is such that a person might be deceived thereby, it shall be presumed, until the contrary is proved, that the person so causing the one thing to resemble the other thing intended by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised."

7. Section 489-A of the I.P.C. not only deals with complete act of counterfeiting but also covers the case where the accused performs any part of the process of counterfeiting. Therefore, if the material shows that the accused knowingly performed any part of the process of counterfeiting. Section 489-A of the I.P.C. becomes applicable. Section 489-C of the I.P.C. deals with possession of forged or counterfeit currency notes or banknotes. It makes possession of forged and counterfeited currency notes or banknotes punishable. Possession and knowledge that the currency notes were counterfeited notes are necessary ingredients to constitute offence under Sections 489-C and 489-A I.P.C. The wording of Section 489-D of the I.P.C. is very wide and would clearly cover a case where a person is found in possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the materials particularly required for the purpose of counterfeiting.

8. Section 120-B IPC provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows:

> "120-A. When two or more persons agree to do, or cause to be done,----
>
> (1) an illegal act, or
>
> (2) an act which is not illegal by the illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."-
>
> The elements of a criminal conspiracy have been stated to be (*a*) an object to be accomplished, (*b*) a plan or scheme embodying means to accomplish the object, (*c*) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (*d*) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed."

9. The word "Counterfeit" in Section 28 does not connote an exact reproduction of the original. Explanation 2 of Section 28 is of great significance. It lays down a rebuttable presumption where resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is like "colourable imitation" therein. In order to apply Section 28, what the court has to see is whether one thing is made to resemble another thing and if that is so and if the resemblance is such that a person might be deceived by it, there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved.

10. In *The State of Uttar Pradesh v. Hafiz Mohd. Ismail and others* **A.I.R. 1960 Supreme Court 669** it was held as follows:

> "The main ingredients of counterfeiting as laid down in S.28 are (i) causing one thing to resemble another thing, and (ii) in tending by means of that resemblance to practise deception or (iii) knowing it to be likely that deception will thereby be practised. Thus, if one thing is made to resemble another thing and the intention is that by such resemblance deception would be practised or even if there is no intention but it is known to be likely that the resemblance is such that deception will thereby be practised there is counterfeiting. Then comes Explanation 1 to S. 28 which lays down that the imitation should be exact. Ordinarily counterfeiting implies the idea of an exact imitation; but for the purpose of the Indian Penal Code there can be counterfeiting even though the imitation is not exact and there are differences in detail between the original and the imitation so long as the resemblance is so close that deception may thereby be practised. Then comes the second Explanation which lays down that where the resemblance is such that a person might be deceived thereby it shall be presumed until the contrary is proved that the person causing one thing to resemble another thing was intending by means of that resemblance to practise deception or knew it to be likely that deception would thereby be practised. This Explanation lays down a rebuttable presumption where the resemblance is such that a person might be deceived thereby. In such a case the intention or the knowledge is presumed unless the contrary is proved".

11. The above analysis of S. 28 of the I.P.C. shows that there is no necessity of importing words like 'colourable imitation' therein. In order to apply it, what the Court has to see is whether one thing is made to resemble another thing, and if that is so and if the resemblance is such that a person might be deceived by it there will be a presumption of the necessary intention or knowledge to make the thing counterfeit, unless the contrary is proved. What the court therefore has to see is whether one thing has been made to resemble another thing. If it finds that in fact one thing has been made to

resemble another it has further to decide whether the resemblance is such that a person might be deceived. If it comes to the conclusion that the resemblance is such that a person might be deceived by it, it can presume the necessary intention or knowledge (until the contrary is proved) and counterfeiting would then be complete. Therefore the two necessary elements in this case are (1) whether the counterfeit notes made by the appellant were made to resemble the genuine notes, and (ii) if they were so made to resemble, whether resemblance was such as might deceive a person. If both these things were found the currency notes in this case would be counterfeit and the necessary intention or knowledge would be presumed unless the contrary was proved.

12. On the above touchstone, the first question that arises for consideration in this appeal is whether the notes seized from the possession of Khilesh Kumar in the house of appellant-Dineshwar were counterfeit currency-notes and whether they were found in possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes. The burden lies on the prosecution to show that the notes seized from the possession of Khilesh Kumar inside the house of appellant-Dineshwar resembled genuine currency notes and the resemblance was such that any person might be deceived by it. This presumption could be discharged by the prosecution by tendering in evidence, the report of the Currency-Note Press, Nashik Road as evidence or by producing and exhibiting the currency notes seized from the possession of the appellant in Court. In this case, the prosecution has failed to discharge its burden completely. The report of Currency-Note Press was neither tendered and exhibited in evidence by the prosecution nor was put to the appellant in the examination under Section 313 Cr.P.C. It, therefore, could not form the basis for convicting the appellant under the

offences aforesaid in para 1 (supra). Even otherwise, a perusal of the report of the Currency-Note Press shows that no specific opinion has been given that the currency notes resembled the genuine currency notes. It does not show that the photograph of Mahatma Gandhi was printed on the notes or not or whether the silver line was present in the notes or not. It does not give any specific opinion that the notes were counterfeit notes.

13. It was argued by the learned Government Advocate that since all notes of the same denomination had the same serial number printed on it, therefore, merely by looking on those notes anybody could make out that they did not resemble the genuine currency notes in any manner. This argument needs to be stated only to be rejected. Nobody looks at the serial number of the notes while accepting the notes. The most important features noticed are the colour of the note, the photograph of Mahatma Gandhi on it, the silver lining on the note and the paper used. The report of the Currency Note Printing Press, Nasik is silent on all the aforesaid points.

14. The arguments advanced by the learned counsel for the appellant on the other hand have force. The report of the Currency-Note Press, Nasik Road does not give any details of the notes sent for examination which would show that these notes resembled the genuine currency notes of the denomination of Rs.100/- and Rs.50/-. Since the report of the Currency-Note Press, Nasik Road was not tendered and exhibited and also not put to the appellant in their examination under Section 313 Cr.P.C., this report cannot confirm the basis for the conviction of the appellant. Non-production of the notes seized from the appellant's house also creates a serious dent in the prosecution case and it cannot be held that the notes which were being printed or were seized from the possession of Khilesh Kumar

from the house of the appellant-Dineshwar resembled the genuine notes or were counterfeit currency notes.

15 The testimony of Santosh Kumar Deshmukh P.W.6 clearly shows that at the time the Police searched the premises, he was all alone near the printing machine. It also appears that he was detained by the police for two days at the Police Station. His testimony also does not show the presence of Dineshwar or Khilesh Kumar Sahu at the time of alleged seizure of the machinery or notes vide Ex.P.13. This renders the testimony of Sub-Inspector Anup Nag P.W.8 doubtful that he had seized the apparatus for printing fake notes from Khilesh Kumar Sahu. It is pertinent to note that Sub-Inspector Anup Nag P.W.8 has also not mentioned in paragraph 2 of his testimony as to how and in what manner the seized notes resembled the genuine notes. His testimony in paragraph 13 creates a doubt that seized notes and printing material were deposited in the *Malkhana* of the concerned Police Station. The entry in the *Malkhana* register has also not been proved by the prosecution. So far as the other evidence led by the prosecution is concerned, Islam Khan P.W.1, Jitendra Kumar P.W.2, Giridharilal P.W.3, Tikaram Verma P.W.4 and Ramkumar Singh P.W.5 did not support the prosecution story and were declared hostile.

16. In the case of **Hafiz Mohd. Ismail** (supra) after comparison of the counterfeit labels and wrappers used by the accused on his soaps with the genuine labels and wrappers of the Sunlight and Lifebuoy soaps of the complainant company the Court came to the conclusion that the resemblance between them was such as might deceive a person and that the differences in detail did not affect the resemblance. In the present case, the prosecution did not care to produce the notes alleged to have been seized from the appellant's house before the trial Court and nothing was elicited in the testimony of Sub-Inspector Anup Nag P.W.8 to show that the notes which were

seized resembled the genuine currency notes. There is no evidence to show that the appellant conspired with Khilesh Kumar to print counterfeit notes.

17. Having thus considered the evidence led by the prosecution in its entirety, the following points emerge:

a. The prosecution has failed to prove that the notes alleged to have been seized from the house of the appellant resembled the genuine currency notes and were counterfeit currency notes.

b. The prosecution has also failed to establish that the notes which were half printed on one side on a plain sheet of paper resembled the genuine currency notes in any manner.

c. The prosecution did not produce the seized currency notes before the trial Court and did not exhibit them in evidence.

d. The report of the Currency-Note Press, Nasik Road was neither tendered nor exhibited in evidence. It also did not give any reason to conclude after examination that the notes resembled the genuine currency notes. It was also not put to the appellant during his examination under Section 313 Cr.P.C.

e. Independent witnesses of the seizure of the currency notes did not support the testimony of Sub-Inspector Anup Nag P.W.8.

f. There is no evidence to prove that the appellant had hatched a criminal conspiracy with Khilesh Kumar for printing and circulating counterfeit currency notes.

In view of the above, the prosecution has failed to bring home the guilt of the appellant-Dineshwar as also that of co-accused Khilesh Kumar Sahu under Section 489-A, 489-C, 489-D and 120-B of the I.P.C. The present appeal has been preferred by appellant-Dineshwar @ Munna. Since the case of co-accused Khilesh Kumar

Sahu stands on the same footing as that of the appellant-Dineshwar, in my considered opinion, in the interest of justice, co-accused Khilesh Kumar Sahu is also entitled to benefit of this judgment. In this regard, reliance is placed on *Vajrapu Sambayya Naidu and others v. State of A.P. and others* **2003 CRI.L.J. 4433** and *Gurucharan Kumar and another v. State of Rajasthan* **(2003) 2 SCC 698.**

18. In the result, the appeal is allowed. Conviction of the appellant -Dineshwar as also of co-accused Khilesh Kumar Sahu under Section 489-A, 489-C, 489-D and 120-B of the I.P.C. and the sentences awarded thereunder are set aside. The appellant-Dineshwar @ Munna and co-accused Khilesh Kumar Sahu are acquitted and shall be set at liberty forthwith, if not required in any other case. Fine paid, if any, shall be refunded.

Sd/-
Dilip Raosaheb Deshmukh
Judge

12.05.2006